

MTC Use Tax Information Reporting Work Group Teleconference

As of September 6, 2017

1. Include marketplace sellers, like E Bay, in definition of remote seller? Should transactional notice be provided by vendor or marketplace? Colorado placed the obligation on the seller but MTC is not so constrained. Should annual notice be provided by the vendor? Is there a substantial risk of double reporting?

RECOMMENDATION: Marketplace facilitators should be included in the definition of remote sellers, when they act as a marketplace facilitator for a given transaction. The legal obligation to report should be based on the nature of the transaction and not on the marketplace facilitator's status as such. The responsibility for providing the consumer with both the transactional and the annual notice should be placed on the marketplace facilitator. For purposes of use tax information reporting, a "marketplace facilitator" is a marketplace that provides check out services in conformity with the NCSL model.

1a. Should a marketplace referrer be required to report information regarding the vendors to whom it has referred customers, as the Washington Bill requires?

RECOMMENDATION: A marketplace referrer should be required to provide this information. Therefore, the model should include a definition of marketplace referrer and a substantive provision requiring notification.

2. Where should a seller of digital goods report if it has incomplete or conflicting information regarding the consumer's location? Colorado requires the bill-to address be used if available, then any method that appropriately reflects the market. Should the MTC model require location of use as the primary rule, then bill-to address?

RECOMMENDATION: The model should allow the seller of digital goods to use any commercially reasonable method of sourcing the sale for reporting purposes.

3. Expand scope of model – short-term rental properties (Air B&B)? Or leave this issue for future consideration?

RECOMMENDATION: The issue of how the reporting requirements should apply to a sale of services will not be addressed as part of this project.

4. Which entity has the reporting obligation when multiple sellers are members of a controlled group? Does it matter?

RECOMMENDATION: It does not matter which member of a controlled group consisting of multiple sellers files the required reports. However, there should be sufficient information in the annual report to the consumer from which the consumer can determine the identity of the actual seller.

4a. If a seller should submit more information to the state than is required, should the state reject the report? If not, what should the state do with the extra information?

RECOMMENDATION: This issue should be addressed, if at all, through the development of individual state administrative policies to respond to such a situation. It is not appropriately addressed through the model.

4b. What information should be required in the annual report to the tax agency? Should any additional information be required for a single report filed on behalf of multiple sellers? May the seller, on a voluntary basis, report sales that have been reported to the state, in addition to total sales (the difference would be exempt sales)?

RECOMMENDATION: The current draft model lists the required information for the annual report to the tax agency. No additional information is required for multiple sellers or multiple marketplace sellers. The seller should report only total sales and not separately break out exempt sales.

5a. Should there be a de minimis reporting threshold for small vendors? Should that de minimis threshold be different for the transactional as opposed to the annual notice and reporting requirements?

5b. Should there be a different de minimis reporting threshold for marketplaces?

RECOMMENDATIONS FOR 5A AND 5B: There should be separate reporting thresholds for small vendors and for marketplaces. The threshold for controlled groups filing a single report should be at the controlled group level. The work group recommends a blank dollar volume threshold of \$_____, the exact amount to be set by each state. The work group should consider providing an explanatory note with the model, to provide guidance to the states in setting the amount, such as setting the amount at such a level as to satisfy due process considerations.

5c. Should there be, in addition to a cumulative dollar volume threshold, also a minimum number of transactions reporting threshold?

5d. Should there be alternatives (i.e., links to more detailed notices elsewhere on the seller's website) if technological or other limits such as a maximum number of characters preclude or restrict the seller from providing all the required information for the transactional notice?

6. Lookback period following business acquisitions? Use of voluntary disclosures or penalty waivers in such situations?

RECOMMENDATION: There should be a lookback period, and it should not be limited to business acquisitions. Such a period does not preclude the use of standard VDAs and/or penalty waivers. The general lookback period should be tied to the general limitations period for consumer use tax reporting. In the case of business acquisitions, the lookback period should be based on state successor in interest statutes regarding the assumption of liabilities by the successor.

7. Should business to business sales be included in the model, or should the model be limited to consumer sales?

RECOMMENDATION: The model should cover all sales, both B2B and B2C.

8. Should sellers, etc., be given the option to send the annual report to the Purchaser electronically?

RECOMMENDATION: Yes, provided that the seller must make the election on an annual basis by December 1 of each year, to coincide with the income tax filing deadline for individuals. The seller's opt-in election must be made in response to a communication that clearly indicates that the electronic opt-in is with respect to an important tax document that will be needed for a state tax filing for the year. This is to facilitate tax reporting for consumers in states that have a line for sales or use tax paid on the personal income tax return.

9. Which term should be used throughout the model – “tangible personal property” or “product”? Which term is more accurate in view of the fact that services are not included within the model?

10. Should the fee described in (b)(8)(b) of the model with respect to the definition of “referrer” be limited to fees for a completed sale, and not for listing the product on a website or for an ad for the product?

11. How broad should the term “referrer” be? Should it include click through affiliates? What about a pure advertiser?